

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Conor O'Shea	Team: Squad #6	CCRB Case #: 201807701	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/02/2018 10:45 PM	Location of Incident: In front of 1701 Putnam Avenue	Precinct: 104	18 Mo. SOL 3/2/2020	EO SOL 3/2/2020	
Date/Time CV Reported Tue, 09/04/2018 11:10 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/17/2018 11:14 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Oswald	08354	949431	104 PCT
2. POM Brian Abbondandolo	15447	956362	104 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Abbondandolo	Abuse: Police Officer Brian Abbondandolo stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Michael Oswald	Abuse: Police Officer Michael Oswald stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM Brian Abbondandolo	Abuse: Police Officer Brian Abbondandolo frisked § 87(2)(b)	
D.POM Brian Abbondandolo	Abuse: Police Officer Brian Abbondandolo searched § 87(2)(b)	
E.POM Michael Oswald	Abuse: Police Officer Michael Oswald frisked § 87(2)(b)	
F.POM Michael Oswald	Abuse: Police Officer Michael Oswald searched § 87(2)(b)	
G.POM Brian Abbondandolo	Abuse: Police Officer Brian Abbondandolo frisked § 87(2)(b)	
H.POM Brian Abbondandolo	Abuse: Police Officer Brian Abbondandolo searched § 87(2)(b)	
I.POM Michael Oswald	Abuse: Police Officer Michael Oswald searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
J.POM Brian Abbondandolo	Abuse: Police Officer Brian Abbondandolo searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]

Case Summary

On September 4, 2018, § 87(2)(b) called IAB and filed a complaint over the phone, generating IAB log #18-35948. § 87(2)(b)'s complaint was received at the CCRB as case #201807701 on September 17, 2018, but was split into three cases due to multiple incident dates, generating additional cases #201808128 and #201808129.

On September 2, 2018, at approximately 10:45 p.m., § 87(2)(b) drove to Fresh Taco restaurant, located at 1701 Putnam Avenue in Queens, with his two cousins, § 87(2)(b)-old § 87(2)(b) and § 87(2)(b)-old § 87(2)(b). § 87(2)(b) parked his vehicle in front of a fire hydrant by Fresh Taco and purchased tacos from the restaurant. Police Officer Brian Abbondandolo and Police Officer Michael Oswald, both of the 104th Precinct, stopped § 87(2)(b)'s vehicle and approached on foot (**Allegations A and B: Abuse of Authority—Vehicle stop, § 87(2)(g)**). PO Abbondandolo ordered § 87(2)(b) to roll down the driver's window, detected an odor of marijuana, and ordered § 87(2)(b) to exit the vehicle, which he did. PO Abbondandolo frisked § 87(2)(b) (**Allegation C: Abuse of Authority—Frisk, § 87(2)(g)**). PO Abbondandolo allegedly searched § 87(2)(b)'s person (**Allegation D: Abuse of Authority—Search of person, § 87(2)(g)**). § 87(2)(b) was ordered to exit the vehicle, and he complied. PO Oswald allegedly frisked and allegedly searched § 87(2)(b) (**Allegation E: Abuse of Authority—Frisk, § 87(2)(g)**; **Allegation F: Abuse of Authority—Search of person, § 87(2)(g)**). § 87(2)(b) was ordered to exit the vehicle, and he complied. PO Abbondandolo allegedly frisked and allegedly searched § 87(2)(b) (**Allegation G: Abuse of Authority—Frisk, § 87(2)(g)**; **Allegation H: Abuse of Authority—Search of person, § 87(2)(g)**). Both PO Oswald and PO Abbondandolo allegedly searched the passenger compartment of § 87(2)(b)'s vehicle (**Allegations I and J: Abuse of Authority—Vehicle search, § 87(2)(g)**). No arrest or summons resulted. § 87(4-b), § 87(2)(g)

There is no video evidence in this case.

Findings and Recommendations

Allegation A—Abuse of Authority: Police Officer Brian Abbondandolo stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation B—Abuse of Authority: Police Officer Michael Oswald stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

An attorney was consulted regarding these allegations.

The following facts are undisputed. On September 2, 2018, between 10:30 p.m. and 10:45 p.m., PO Abbondandolo and PO Oswald were driving an unmarked patrol car and stopped § 87(2)(b)'s four-door sedan in the vicinity of Fresh Taco restaurant, which is located at 1701 Putnam Avenue in Queens. There is a fire hydrant directly on the corner in front of Fresh Taco.

All three civilians involved in this case—§ 87(2)(b) (**Board Review 01–04**), § 87(2)(b) (**Board Review 05**), and § 87(2)(b) (**Board Review 06, 07**)—consistently stated that § 87(2)(b)'s BMW was parked on the corner directly in front of Fresh Taco restaurant, located at 1701 Putnam Avenue, when PO Abbondandolo and PO Oswald's patrol car pulled up near them and "boxed" them in, stopping them. § 87(2)(b) acknowledged that his vehicle was parked directly next to the fire hydrant.

PO Abbondandolo testified (**Board Review 08**) that he was on patrol with PO Oswald in an unmarked, gray sedan when he observed § 87(2)(b)'s vehicle double-parked a few blocks

away from Fresh Taco. In the vehicle, there were only two individuals, whom PO Abbondandolo identified during his CCRB interview after viewing photographs as § 87(2)(b) and § 87(2)(b). § 87(2)(b) was seated in the driver's seat and § 87(2)(b) was seated in the back seat on the passenger's side. PO Abbondandolo denied that a third person was present in the vehicle.

PO Oswald testified (**Board Review 09**) that he was on patrol in the 104th Precinct during the incident but did not remember anything about the incident. PO Oswald did not, however, deny any details of the incident, any of the conduct alleged, or any circumstances described in § 87(2)(b)'s complaint, either. PO Oswald is familiar with Fresh Taco restaurant and frequently patrols nearby, although there are no specific conditions associated with the restaurant itself.

Traffic stops are lawful when they are “based on probable cause that a driver has committed a traffic violation.” *People v. Robinson*, 97 N.Y.2d 341 (2001) (**Board Review 10**). In New York State, it is a traffic violation to stop, stand, or park a vehicle within fifteen feet of a fire hydrant without having a licensed operator in the front seat who can immediately move the vehicle in case of an emergency. *NY CLS Veh & Tr § 1202(b)(1)* (**Board Review 11**). It is also a traffic violation to stop, stand, or park a vehicle “on the roadway side of any vehicle stopped, standing or parked at the edge or curb of a street.” *NY CLS Veh & Tr § 1202(a)(1)(a)* (**Board Review 11**).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation C—Abuse of Authority: Police Officer Brian Abbondandolo frisked § 87(2)(b)

Allegation D—Abuse of Authority: Police Officer Brian Abbondandolo searched § 87(2)(b)

Allegation E—Abuse of Authority: Police Officer Michael Oswald frisked § 87(2)(b)

Allegation F—Abuse of Authority: Police Officer Michael Oswald searched § 87(2)(b)

Allegation G—Abuse of Authority: Police Officer Brian Abbondandolo frisked § 87(2)(b)

Allegation H—Abuse of Authority: Police Officer Brian Abbondandolo searched § 87(2)(b)

Allegation I—Abuse of Authority: Police Officer Michael Oswald searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation J—Abuse of Authority: Police Officer Brian Abbondandolo searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

An attorney was consulted regarding these allegations.

The following facts are undisputed. § 87(2)(b) and § 87(2)(b) were both ordered to exit the vehicle. PO Abbondandolo frisked § 87(2)(b). § 87(2)(b) was frisked and § 87(2)(b)'s vehicle was searched. No arrest or summons resulted.

§ 87(2)(b) (**Board Review 02, 03**) testified that as PO Abbondandolo and PO Oswald approached his vehicle, the younger-looking of the two officers—identified by the investigation as PO Abbondandolo—ordered all of the occupants to exit the vehicle. § 87(2)(b) complied. PO Abbondandolo patted down § 87(2)(b)'s groin area and entered his pockets before telling

him to stand by the rear of his vehicle with § 87(2)(b) and § 87(2)(b) which he did. In a follow-up phone statement, § 87(2)(b) (**Board Review 04**) denied that there was any marijuana, or any odor of marijuana, in his vehicle. § 87(2)(b) further denied possessing marijuana during the incident or smoking marijuana earlier that day, and denied that § 87(2)(b) or § 87(2)(b) had smoked marijuana earlier that day, either. PO Abbondandolo searched § 87(2)(b)'s vehicle, but not the trunk, while PO Oswald stood at the rear of the vehicle with § 87(2)(b) and § 87(2)(b). PO Abbondandolo then told § 87(2)(b) that he liked § 87(2)(b)'s Commercial Driver's License (CDL), and drove away with PO Oswald. No contraband was recovered.

§ 87(2)(g)

§ 87(2)(b) admitted to having smoked marijuana approximately one or two hours prior to the incident while wearing the same clothes that he was wearing during the incident. § 87(2)(b) denied, however, that the vehicle smelled like marijuana. One officer, who later commented on § 87(2)(b)'s CDL license and was identified by the investigation as PO Abbondandolo, frisked and searched § 87(2)(b) but the other officer—identified by the investigation as PO Oswald—frisked and searched § 87(2)(b). PO Abbondandolo then frisked and searched § 87(2)(b). Both PO Abbondandolo and PO Oswald searched § 87(2)(b)'s vehicle, but not the trunk.

§ 87(2)(g)

§ 87(2)(b)

According to § 87(2)(b) the blue-eyed officer—identified by the investigation as PO Abbondandolo, given that he has noticeably blue eyes and PO Oswald has green eyes—ordered § 87(2)(b) to open the vehicle's trunk from inside of the car, and then searched the trunk, before the occupants exited the vehicle. Once § 87(2)(b) and § 87(2)(b) were ordered out of the vehicle, § 87(2)(b) did not see if either of them were frisked or searched, but they told him afterward that they had been frisked and searched. PO Abbondandolo frisked § 87(2)(b) but did not enter his pockets. PO Abbondandolo searched the passenger compartment of the vehicle while § 87(2)(b) and § 87(2)(b) stood at the rear of the vehicle with PO Oswald.

PO Abbondandolo testified (**Board Review 08**) that when § 87(2)(b) lowered his window at PO Abbondandolo's command, PO Abbondandolo immediately smelled an odor of marijuana emanating from the vehicle. PO Abbondandolo could not determine whether it smelled burnt or non-burnt, though. PO Abbondandolo asked § 87(2)(b) why the vehicle smelled like marijuana. § 87(2)(b) denied having smoked but § 87(2)(b) said he had smoked earlier that same day. PO Abbondandolo ordered § 87(2)(b) to exit the vehicle and escorted him to the rear of his vehicle. Meanwhile, PO Abbondandolo could not see what PO Oswald was doing but did hear PO Oswald order § 87(2)(b) to exit the vehicle. PO Abbondandolo did not see PO Oswald frisk or search § 87(2)(b)'s person but assumed that he did. PO Abbondandolo frisked § 87(2)(b)'s waistband area to check for weapons. PO Abbondandolo denied having any individualized, particular suspicion that § 87(2)(b) was armed. Instead, PO Abbondandolo frisked § 87(2)(b) solely because "we do it for everybody, whenever we take somebody out of the vehicle." No contraband was recovered during the frisk. PO Abbondandolo denied entering § 87(2)(b)'s pockets.

PO Abbondandolo (**Board Review 08**) further testified that PO Oswald entered and searched § 87(2)(b)'s vehicle to look for weapons. PO Abbondandolo denied ever entering § 87(2)(b)'s vehicle. In the back seat, PO Oswald found an open container of alcohol, possibly a

beer can, which was somewhat full. PO Oswald emptied its contents onto the street. No other contraband was recovered in the vehicle. PO Abbondandolo and § 87(2)(b) discussed § 87(2)(b) § 87(2)(b)'s relationship problems with his girlfriend, after which PO Abbondandolo decided not to issue § 87(2)(b) any summonses for double parking or having an open container in the vehicle. No arrests resulted, either.

As described in the previous section, PO Oswald (**Board Review 09**) did not remember the incident.

§ 87(2)(g)

[REDACTED]

An officer has probable cause to conduct a warrantless search of a vehicle and its occupants if, during a lawful vehicle stop, that officer detects the odor of marijuana smoke. People v. Chestnut, 43 A.D.2d 260 (1974) (**Board Review 12**).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

- § 87(2)(b) [REDACTED]
- [REDACTED]
- § 87(2)(b) [REDACTED]
- [REDACTED]
- § 87(2)(b) [REDACTED]
- [REDACTED]
- PO Abbondandolo has been a member of service for four years and has been a subject in one prior CCRB complaint and one allegation, which was not substantiated. [REDACTED]
- § 87(2)(g) [REDACTED]
- PO Oswald has been a member of service for eight years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED] declined to mediate this complaint and requested a full investigation. As such, mediation was not presented to either § 87(2)(b) [REDACTED] or § 87(2)(b) [REDACTED]
- As of December 6, 2018, the New York City Office of the Comptroller has not received any Notice of Claim from § 87(2)(b) [REDACTED] regarding this incident (**Board Review 21**).
- As of February 22, 2019, the New York City Office of the Comptroller has not received any Notice of Claim from either § 87(2)(b) [REDACTED] or § 87(2)(b) [REDACTED] regarding this incident (**Board Review 22**).
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- According to the Office of Court Administration (OCA), § 87(2)(b) [REDACTED] has no history of convictions in New York City (**Board Review 25**).

Squad No.: _____

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date